

Best practices when using an independent fiduciary in proxy voting

Introduction

Asset managers, who invest on behalf of their clients, asset owners, are usually responsible for voting at the shareholder meetings of the companies in which they invest.¹ Proxy voting is an important component of an asset manager's stewardship of its clients' assets as it is the formal mechanism for holding boards and management to account for their actions and performance. In fulfilling its duty, there may be a small number of situations where an asset manager may determine not to vote itself due to regulatory restrictions or a perceived or actual conflict of interest. In such cases, an asset manager may use an independent third party, here referred to as an independent fiduciary, to instruct the votes on its clients' holdings. This way, the asset manager can comply with regulatory obligations and address potential conflicts while simultaneously demonstrating that vote decisions were made solely to advance its clients' long-term economic interests. There are a wide range of practices around the use of independent fiduciaries. This Spotlight discusses why an asset manager may retain an independent fiduciary, explains the role of the independent fiduciary in these situations and proposes some best practices.

Why would an asset manager use an independent fiduciary?

There are a number of reasons an asset manager may be required, or determine it would be prudent, to retain an independent fiduciary to vote its clients' holdings at certain shareholder meetings. Most commonly, it would be to manage situations where the asset manager has, or may be perceived to have, a conflict of interest with its clients in relation to proxy voting at a company's shareholder meeting. For example, when the asset manager itself is part of a public company it could face a conflict in voting at its own company's shareholder meeting.

Regulation is another reason to retain an independent fiduciary to vote certain meetings. Sometimes an asset manager's ownership structure or investments in a protected sector may trigger regulatory constraints on voting. For example, in sectors such as defense, financial services and energy, regulation intended to protect the sector from foreign control or takeover may curtail voting rights when an asset manager's clients collectively own over a certain percentage of the shares in companies in a sector. Under some regulatory rules, an asset manager may be permitted to manage client holdings in an issuer over an aggregate specified ownership percentage on the condition that it does not vote those shares.

BlackRock's approach to using an independent fiduciary

BlackRock appoints an independent fiduciary, Sustainalytics, to vote proxies where we are required by regulation not to vote ourselves or where there are actual or perceived conflicts of interest. The independent fiduciary makes voting decisions based solely on BlackRock's publicly available [proxy voting guidelines](#), which aim to advance clients' long-term economic interests, and information disclosed publicly by the relevant companies. The independent fiduciary may engage with companies in its own name at its discretion to ask clarifying questions or in response to a company's request for engagement on voting matters, though it is not authorized to engage with companies on BlackRock's behalf or represent BlackRock's views. The list of companies for which BlackRock appoints an independent fiduciary is managed by BlackRock's Legal and Compliance team. For more information, see our [note](#) on BlackRock Investment Stewardship's approach.

1. Most asset owners authorize their asset manager to vote on their behalf as part of their investment management agreement, although some prefer to retain the voting rights and vote themselves across all their shareholdings. See our [ViewPoint on the investment Stewardship Ecosystem](#) for further information.

What are the roles and responsibilities of an independent fiduciary?

An independent fiduciary in a proxy voting context is a service provider with relevant expertise to determine how to vote on behalf of an investor who may be conflicted or for other reasons be unable to vote themselves at certain shareholder meetings. The asset manager, through its investment stewardship team and in consultation with the legal and compliance function, determines which companies' shareholder meetings need to be voted by its independent fiduciary and which voting guidelines are used as the benchmark against which a company's governance practices are assessed (see below on sound practices in appointing an independent fiduciary). This determination is enshrined in a contractual arrangement between the independent fiduciary and the asset manager.

The role of an independent fiduciary is to vote items of business put to a shareholder meeting it has been asked to evaluate. Using the applicable voting guidelines as a reference, the independent fiduciary determines how to vote to advance the long-term economic interests of the beneficial holder(s) of the shares, usually the asset manager's clients invested in that company. The independent fiduciary may instruct the asset manager or a separate third-party voting agent how to execute the vote. The asset manager will not have the right to override the independent fiduciary's decision. Depending on the scope of the independent fiduciary's engagement, it may provide a rationale for its determination on the items voted on. Votes instructed by an independent fiduciary would be reported as coming from the asset manager as the registered shareholder in the company's records and in regulatory disclosures.

Corporate-shareholder dialogue when an independent fiduciary votes

Corporate-shareholder dialogue - or engagement - is generally considered an important component of an asset manager's stewardship activities on behalf of its clients. Engagement often informs an asset manager's voting decisions but it is also a means of sharing feedback on a company's corporate governance and business practices on which there may not be a vote. Ongoing engagement helps build mutual understanding about governance and business trends and expectations.

For that reason, an asset manager may continue to engage portfolio companies even when the independent fiduciary will determine how to vote at a company's shareholder meeting.

During the period between when proxy materials are made available to investors and the shareholder meeting where voting occurs, the asset manager should consider how responsibility for engagement can be transitioned to the independent fiduciary in an orderly manner. Once it has been retained to vote at a particular shareholder meeting, the independent fiduciary is expected to undertake a thorough analysis of any voting items; analysis may include engagement by the independent fiduciary with the company. An independent fiduciary may engage a company in its own right but it should not claim to represent the perspective of the asset manager on whose behalf it will vote.

Who provides independent fiduciary services?

The requirements that an independent fiduciary have specialist corporate governance and proxy voting experience and expertise and be free of conflicts lead to a relatively small pool of providers.

Exhibit 1 contains a list of firms known to act as an independent fiduciary. A definitive list is difficult to compile as the landscape has evolved over time through mergers and acquisitions and changes in business models, and most asset managers who retain an independent fiduciary do not disclose its identity. Several proxy advisory firms also offer independent fiduciary services. Generally, if an asset manager is selecting an independent fiduciary, it should be a firm that is not also the primary proxy advisory services provider to the asset manager. As the normal course of a proxy advisory firm's offerings for an asset manager already includes proxy voting research and recommendations, vote instruction platforms and record keeping, appointing another party as the independent fiduciary diversifies the platforms depended on and mitigates vendor risk.

Exhibit 1: Independent Fiduciary Proxy Voting Services

Our analysis has identified the following six firms as providers of independent fiduciary services.

- [Egan Jones](#)
- [Glass Lewis](#)
- [ISS](#)
- [Minerva Analytics](#)
- [PWC Governance Insights](#)
- [Sustainalytics](#)

We anticipate that the pool of providers of independent fiduciary proxy voting services may be larger but it is difficult to determine given not all providers list this as a service. Specialist research and governance firms such as [ValueEdge Advisors](#), [Proxinvest](#), and [Ownership Matters](#) would have the capabilities to act as an independent fiduciary. Further, a firm or individual may fulfil the function in instances where the process is not complex or may only be a one off, e.g. voting a company's shares held in that company's pension or employee share plan.

How asset managers appoint and oversee the independent fiduciary

An asset manager's approach to identifying, assessing and monitoring an independent fiduciary will be informed by its reasons for retaining one and the number of shareholder meetings it expects the independent fiduciary to vote. An asset manager should provide sufficient disclosure to enable interested clients, regulators, companies and others to understand its approach.

An important consideration is the voting guidelines or corporate governance policies that the independent fiduciary is instructed to use in its decisions about how to vote. Options for guidelines or policies that the independent fiduciary could use as a guide include the independent fiduciary applying the asset manager's own guidelines, a proxy advisor's policies, a widely recognized market-level corporate governance code, or the independent fiduciary's own voting policies. We believe best practice in this area is for the independent fiduciary to vote using the asset manager's voting guidelines. Using the asset manager's guidelines does not mean the vote would be exactly the same as if the asset manager had voted but it is more likely to result in votes that are consistent with the asset manager's stewardship views and consistent with its clients' expectations. To that end, the asset manager should provide the independent fiduciary with the asset manager's written voting guidelines and communicate any updates to those guidelines. In addition, at the conclusion of the proxy season, the asset manager should conduct a review of the votes cast by the independent fiduciary to ascertain that they are consistent with the asset manager's guidelines. If votes are not in line with the guidelines, the asset manager should provide additional education to the independent fiduciary or, in an extreme case, the manager may determine it best to identify a new independent fiduciary for future votes.

Other considerations include the level of discretion provided to the independent fiduciary in determining how to vote, with a range from a rigid decision tree to a case by case assessment. Approaches may also differ in relation to engagement and whether the independent fiduciary is encouraged to engage with companies, may be responsive but not initiate engagement or may not engage companies at all.

An asset manager's investment stewardship and legal and compliance functions collaborate in determining the appropriate approach and the process for appointing an independent fiduciary, as well as the subsequent use and oversight of the provider's services. They may work together to identify, evaluate and contract with the independent fiduciary, and also determine, possibly with external counsel, which shareholder meetings should be voted by the independent fiduciary and why.

An asset manager's due diligence on an independent fiduciary should take into consideration, amongst other factors, the provider's:

- Independence from the asset manager and lack of conflicts
- Technical capabilities related to proxy voting analysis and instruction across regions and sectors
- Business policies and practices to ensure high standards of integrity
- Resources, including people and technology
- Operational resilience

Once appointed, the asset manager advises the independent fiduciary of the names of the companies to be voted by the independent fiduciary and of any changes to that list and the applicable voting guidelines (see above). An asset manager would also agree with the independent fiduciary the process by which it will be advised of forthcoming meetings, how and to whom it will send vote instructions and what reporting would be required. The asset manager should also establish a process for continuing due diligence to assure itself that the independent fiduciary is instructing votes appropriately and in accordance with the agreed approach.

Asset managers must be prepared to address conflicts of interest that arise in voting proxies in their clients' long-term economic interests. While many managers employ an internal oversight committee to make proxy voting decisions where a conflict has been identified, we believe that an external third party provides enhanced protection.

As set out in Exhibit 2, some asset managers, such as BlackRock, use stand-alone specialists as their independent fiduciary, while others use the same provider that serves as the manager's proxy advisor.^{2 3} An asset manager may determine to retain more than one independent fiduciary as a backup should the first independent fiduciary subsequently have a conflict. This would help to ensure the required process is followed and clients' holdings are voted in their long-term economic interests, while avoiding perceptions of 'opinion shopping', particularly if a vote is sensitive or high profile.

Exhibit 2: Different approaches disclosed by asset managers

Asset managers disclosing the use of a single proxy advisor and independent fiduciary:

- [Fidelity](#) (through Geode Capital Management, the sub-advisor for Fidelity index funds)
- [J.P. Morgan Asset Management](#)

Asset managers disclosing the use of an independent fiduciary but not specifying if it is their proxy advisor:

- [BNY Mellon Investment Management](#)
- [State Street Global Advisors](#)
- [UBS Asset Management](#)

Asset managers disclosing the use of a proxy advisor but not specifying the use of an independent fiduciary:

- [Allianz Global Investors](#)
- [Capital Group](#)
- [Goldman Sachs Asset Management](#)

Asset managers disclosing the use of a different proxy advisor and independent fiduciary:

- BlackRock
 - [BlackRock Investment Stewardship team profile](#)
 - [Corporate Governance and Engagement Principles](#)
 - [How BlackRock Investment Stewardship manages conflicts of interest](#)

No disclosure on the use of either a proxy advisor or independent fiduciary:

- Vanguard

2. Ignites: 'Schroders votes against its own remuneration report', February 6, 2020

3. [Deutsche Bank Top Investor BlackRock to Outsource AGM Voting](#), May 20, 2019; [Small Firm Could Turn the Vote on Dimon](#), May 7, 2013

Conclusion

Asset managers may, from time to time, employ an independent fiduciary to vote holdings in certain companies as a result of actual or perceived conflicts of interest or for regulatory reasons. BlackRock recommends the following practices to ensure the independent fiduciary is able to fulfil its role effectively.

Consistent with its fiduciary duties, an asset manager should appoint a third party that is independent with the expertise and experience to vote in the long-term economic interests of the asset manager's clients.

The independent fiduciary should apply the asset manager's voting guidelines. These should be well explained to and understood by the independent fiduciary. The asset manager should assess at the end of the proxy season, and no less than annually, that the independent fiduciary has voted at each shareholder meeting in a manner consistent with those guidelines.

Asset managers should engage companies during the year to build mutual understanding and provide feedback to corporate leadership. In the run up to a company's shareholder meeting at which the independent fiduciary will be voting, the asset manager should defer discussions to the independent fiduciary.

Asset managers should be transparent about the processes governing the use of an independent fiduciary. In this way, companies, regulators and clients are able to engage asset managers in an informed and effective manner. In turn, asset managers can demonstrate a thoughtful and robust approach to managing voting constraints while fulfilling their fiduciary duties.

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